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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARY M. FRANCIS, individually and the
ESTATE OF JOHN C. FRANCIS, acting
through its personal representative,
MARY M. FRANCIS

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

FILED
08 JAN 24 PM 12:24
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *[Signature]*
DEPUTY

'08 CV 0141 BIM POR

CASE NO. _____

COMPLAINT FOR DAMAGES FOR
WRONGFUL DEATH

COME NOW the Plaintiffs above named, by and through their undersigned counsel,
and for their cause of action against the Defendant, state and allege as follows:

1. Plaintiff, Mary M. Francis, is the sole surviving heir of John C. Francis,
deceased, and the personal representative of The Estate of John C. Francis.

2. The defendant herein, acted through its agency, the Federal Aviation Administration.
3. The plaintiffs filed a tort claim against the United States through the office of the Federal Aviation Administration's General Counsel on or about May 18, 2007. A copy of the tort claim is attached to this complaint.
4. The aforesaid tort claim has not been denied by the United States but more than six months has passed since its filing. It was timely filed pursuant to 28 USC § 2401(b).
5. The court has jurisdiction pursuant to 28 U.S.C. § 1346(b).
6. Venue lies in this court pursuant to 28 U.S.C. § 1402(b).
7. At all times relevant hereto, defendant, acting through its agency the Federal Aviation Administration (hereinafter "FAA"), leased from the County of San Diego located within the State of California, certain premises on the McClellan-Palomar Airport (hereinafter "Airport") for the purpose of installing and operating an ILS localizer antenna structure for use as a navigational aid and facility for aircraft conducting approaches to and operating at the Airport.
8. Upon information and belief, the FAA, through its agents, servants, and employees acting within the course and scope of their employment with the FAA, designed, planned, installed, constructed, operated, serviced, and maintained the localizer antenna structure at the McClellan-Palomar Airport.
9. On January 24, 2006 at approximately 0640 Pacific Standard Time, the pilots of a Cessna Citation model 560 aircraft, with federal registration number N86CE (hereinafter the "Citation"), made an approach and attempted a

landing at the McClellan-Palomar Airport in Carlsbad, California and then commenced a normal and foreseeable go-around procedure.

10. It was foreseeable that many aircraft making approaches for landing at the Airport will need to execute a mandatory or elective go-around procedure from an approach or an attempted landing.
11. During the attempted go-around procedure, the Citation became airborne and was fully capable of continued safe flight, but the Citation impacted the localizer antenna structure which intruded upwards into the airspace at the departure end of the runway. This impact with the localizer antenna structure caused immediate and substantial damage to the Citation rendering it incapable of flight. The Citation then impacted the ground, slid and hit a building causing the deaths of four persons aboard the aircraft at the time of the accident, plaintiff's decedent among them.
12. Defendant and its agents, servants, and employees, were negligent, failed to use due care and created a hazardous and dangerous condition of which defendant had actual or constructive notice, including but not limited to the following:
 - a. The ILS localizer antenna structure was negligently designed, planned, installed, constructed, operated, serviced, and maintained.
 - b. The design, installation, and construction of the localizer antenna structure failed to comply with federal airport design standards and regulations and/or generally accepted airport industry design, installation, and construction standards.

- c. The localizer antenna structure failed to meet or comply with FAA design standards, relevant Federal Aviation Regulations ("FARs"), and/or generally accepted industry standards in that it was located in an area required to be free from obstacles and hazards, and/or was located within the runway safety area and the obstacle free area and the obstacle free zone.
 - d. The localizer antenna structure failed to meet FAA design standards, FARs and/or generally accepted industry standards in that it was constructed of materials which were not frangible, and/or was not properly marked and identified as an obstacle and hazard.
 - e. The defendant negligently failed to inspect the Airport and to warn reasonably foreseeable operators of aircraft at the Airport, including the plaintiff's decedent, of unsafe and hazardous conditions at the Airport caused by the negligent design, installation, construction, operation, servicing, maintenance, and/or location of the localizer antenna structure.
13. The defendant's negligence was a proximate cause of the accident and the deaths of the four persons aboard the aircraft at the time of the accident, including John C. Francis, father of Mary M. Francis.
14. If the defendant were a private person, it would be liable to the plaintiffs in accordance with the laws of the State of California, or the laws of some other jurisdiction which may be applicable to this claim.

15. The negligence of the defendant caused the plaintiffs' damages.
16. Plaintiff, Mary M. Francis, has been deprived of her father's love, support, affection, training, guidance, society, companionship, protection, services, care, counsel and, accordingly, has suffered a loss of enjoyment of life, grief and a loss of income. The Estate of John C. Francis has suffered a loss of personal property. These damages exceed the jurisdictional minimum of this Court.
17. Donald W. Lojek has been admitted to practice before this Court *pro hac vice* in Case No. 07cv408-DMS-POR arising out of the same incident which is the subject of this action. A motion presently pends before this Court to consolidate several actions arising out of this same incident. Therefore, consolidation of this action with those other actions to wit:

<u>Short Title of Case</u>	<u>Case No.</u>	<u>Date Filed</u>
<i>Jellinek v. Jaxair</i>	06-cv-02711-DMS-POR	December 14, 2006
<i>Garratt v. San Diego</i>	07-cv-00139-DMS-POR	January 23, 2007
<i>Goship Air v. San Diego</i>	07-cv-00403-DMS-POR	March 5, 2007
<i>Francis v. San Diego</i>	07-cv-00408-DMS-POR	March 5, 2007

is requested for all for the purposes of discovery and other matters as the Court may dictate.


WHEREFORE, Plaintiffs pray that the court enter judgment against defendant as hereinafter set forth:

1. For plaintiffs' special and general damages as may be proved at trial but not less than one million dollars.
2. For pre-judgment interest as provided by law;


3. For costs of suit incurred herein, including attorney fees and expert witness fees;
4. For all other damages available under applicable law; and
5. For such other and further relief as the Court may deem just and proper.

DATED this 23rd day of January, 2008.

LOJEK LAW OFFICES, CHTD.

By: 
Donald W. Lojek - Of the Firm
Attorneys for Plaintiffs

ORRIN L. GROVER, PC

for By: 
Orrin L. Grover - Of the Firm
Attorneys for Plaintiffs

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

146817 - BH

**January 24, 2008
12:24:00**

Civ Fil Non-Pris

USAO #: 08CV0141 CIVIL FILING
Judge.: BARRY T MOSKOWITZ
Amount.: \$350.00 CK
Check#: BC# 7920

Total-> \$350.00

**FROM: FRANCIS V. USA
CIVIL FILING**

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mary M. Francis, individually and the Estate of John C. Francis, 08 JAN 24 PM 12:25
acting through the personal representative, Mary M. Francis

(b) County of Residence of First Listed Plaintiff Twin Falls, Idaho
(EXCEPT IN U.S. PLAINTIFF CASES)

CLERK U.S. DISTRICT COURT
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

BY:

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Lojek Law Offices, Chtd., PO Box 1712, Boise, ID 83701
(208) 343-7733

08 CV 0141 BTM POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input checked="" type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Refined from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 2401(b)

Brief description of cause:
Federal Tort Claim Negligence

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Sabraw

DOCKET NUMBER (As specified in Complaint)

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

146817

AMOUNT

\$350

1/24/08 BLH

APPLYING IFP

JUDGE

MAG. JUDGE